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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,053	06/18/2002	Dietmar Baumann	2081	5497
7590 05/09/2005				
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			EXAMINER KING, BRADLEY T	
			ART UNIT 3683	PAPER NUMBER

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/089,053

**Applicant(s)**

BAUMANN ET AL.

**Examiner**

Bradley T King

**Art Unit**

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3-02</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 08/02/2002. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b) nor has one been received from the International Bureau. See MPEP 1893.03c.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "the friction brake lining has a band brake". It is not clear how the friction lining itself can have a band brake. Rather, it appears from the disclosure that the friction brake has a band brake.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Holcomb, Jr. (US# 4217974).

Holcomb, Jr. discloses all the limitations of the instant claims including; a friction brake, having a rotatable brake body 36, having a friction brake lining 38, and having an actuating device (42, 44, 52) with which the friction brake lining can be pressed against the brake body, characterized in that the friction brake lining has a band brake 64, whose brake band is operatively connected to the actuating device, so that a tensile stress on the brake band drives the actuating device in the direction of pressing the friction brake lining 38 against the brake body 36.

Regarding claim 2, the band brake has a tensing device (60, 62, 66, 68) with a tensing element (66, 68) for tensing the brake band 64, and the tensing element for tensing the brake band can be pressed against a portion of the brake band that leads away at a tangent from a drum (42 and/or 44) of the band brake. See figure 1.

Regarding claim 3, the tensing device of the band brake has two tensing elements (66, 68), which for tensing the brake band can be pressed against two portions of the brake band that lead away from the drum of the band brake.

Regarding claim 4, the two tensing elements (66, 68) are movable toward one another (via the spring when the brake is released) and can be pressed against outer sides, facing away from one another, of the portions of the brake band that lead away from the drum of the band brake.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb, Jr. (US# 4217974) in view of Tatter (US# 1814574).

Holcomb, Jr. discloses all the limitations of the instant claims with exception to the tensing elements being nuts which are displaceable by a spindle. Holcomb instead shows a hydraulically actuated lever assembly. Tatter discloses a similar braking device and further teaches a spindle/nut actuating assembly (see figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a spindle/nut assembly as taught by Tatter in place of the lever assembly of Holcomb as an obvious and art recognized equivalent actuation means. Also note, *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

Claims 5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb, Jr. (US# 4217974) in view of Weilant (US# 5841947).

Holcomb, Jr. discloses all the limitations of the instant claims with exception to the tensing elements being nuts which are displaceable by a spindle and an electric motor for driving the spindle (claim 8). Weilant discloses a similar braking device and

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further teaches a motor driven spindle/nut actuating assembly (see figure 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a motor driven spindle/nut assembly such as taught by Weilant in place of the hydraulic lever assembly of Holcomb as an obvious and art recognized equivalent actuation means. Also note, *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb, Jr. (US# 4217974) in view of Robins et al (US# 2501096).

Holcomb, Jr. discloses all the limitations of the instant claims with exception to the actuating device being a screw gear configuration. Holcomb instead shows a ball/ramp actuating device. Robbins et al discloses a similar brake apparatus and further teaches a screw/nut actuator 17. Both ball/ramp and screw/nut actuators are well known equivalent structures. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a screw/nut actuator such as taught by Robins et al in place of the ball/ramp actuator of Holcomb as an obvious and art recognized equivalent actuation means. Also note, *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

### **Conclusion**

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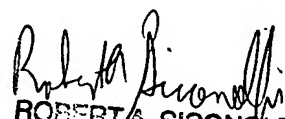
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stevenson et al, Hooten, Bunett and Caero.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley T King whose telephone number is (571) 272-7117. The examiner can normally be reached on 11:00-7:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on (571) 272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BTK

  
ROBERTA A. SICONOLFI  
PATENT EXAMINER  
4/28/08